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August 29, 2019

Ms. Marleene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Response to FCC's Notice of Proposed Rulemaking  
adopted August 1, 2019 and Released August 2, 2019  
seeking comments from interested parties concerning WC  
Docket Nos. 19-126 and 10-90.

Dear Ms. Dortch:

Sandwich Isles Communications Inc. ("SIC") submits comments in response to the Notice of Proposed Rulemaking described above. As you know, SIC is the sole provider of telecommunications service to the previously unserved areas of the Hawaiian Homelands (HHL) SIC's license was issued by, and is binding on, the Hawaiian Homes Commission, the body with sovereign authority over the HHL. Hence, our comments are primarily directed to the portion of Paragraph 46 which reads as follows:

**Sixth, we propose to include any census blocks that are currently unserved outside of price cap carriers where there is no certified high-cost ETC providing service, such as the Hawaiian Homelands**

And footnote 87 which states:

**In 2015, the Commission directed USAC to withhold support from Sandwich Isles Communications due to its owner being convicted of federal tax fraud; since 2015, the Hawaiian Public Utilities Commission has not certified Sandwich Isles Communications per section 54.314(a), making it ineligible for high-cost support.**

### **1. The Premise of The Notice Is Incorrect. SIC Is, And Has Always Been, An ETC**

Enclosed with these comments is a copy of the letter dated September 20, 1995 authored by the Hawaii Public Utilities Commission ("PUC") which confirms that the Hawaiian Homes Commission has the sole authority to grant easements for telephone lines and other utility services over Hawaiian Home Lands. The letter further confirms that Congress, in enacting the 1959 Statehood Act, did not grant the HPUC power of eminent domain on Hawaiian Homelands. Without that power, the HPUC is not capable of determining which public utilities serve Hawaiian Homelands. Also attached to these comments is the letter from the Hawaiian Homes Commission dated June 2, 1998 confirming that SIC is indeed an ETC, and stating all the reasons that SIC has been recognized as an ETC.

### **2. The FCC Designated SIC As An ETC in its 2005 Order**

In implementing the 1996 Telecommunications Act, the FCC recognized each state could set up its own Universal Service Fund for intrastate service. It therefore allowed each state to grant ETCs for intrastate service and recognized that ETC for interstate service. The FCC also retained the right to grant ETCs for interstate service and High Cost USF. Under 47 U.S.C. 214(e)(3) the FCC itself designates the ETC for unserved areas. The FCC has thus, already identified SIC as an ETC for interstate USF, pursuant to statutory law:

**Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.**

Thus, the FCC has already designated SIC as an ETC; the designation has not been revoked, and there is no basis to change that designation.

### **3. The Hawaii PUC Specifically Did Not Deny SIC ETC Status**

To the extent the PUC has any role at all in this process, it would only be with respect to a state fund to support intrastate universal service, as the law contemplated. However, because there is no Hawaii State fund, the ETC process at the PUC only impacts SIC's eligibility at such time as a Hawaii fund is established.

More importantly, the PUC quite specifically did not deny ETC status to SIC. The FCC had extensive conversations with the PUC regarding granting Sandwich Isles an ETC. Those conversations resulted in the PUC stating the FCC was in possession of the information that should be considered in order to make that determination. The two orders expressly say:

**certification of SIC and Pa Makani as high-cost ETCs at this time is premature**

PUC Order September 28, 2015 Page 28 and Page 29.

In their 2016 Order, the PUC expressly confirmed that SIC had filed all information required and requested by the PUC (“**commission determines that SIC and Pa Makani have sufficiently complied with the Annual Reporting**”). Yet, because the FCC has not completed its conversations with the PUC:

**the commission concludes that certification of SIC and Pa Makani by the commission as USF high-cost ETCs cannot be made at this time.**

Thus, SIC (1) does not need ETC certification from the PUC since there is no intrastate USF. Further, SIC has already been so recognized as an ETC by both the Hawaiian Homes Commission and the FCC; and (2) even the PUC, if their position mattered, did not deny SIC's certification and left the matter open for determination.

**4. Reliance On The PUC's Action Is Disingenuous And False, As Universal Service Funds Were Cut Off to SIC Long Before The PUC Orders Were Issued**

It is strange indeed that the Notice claims the lack of PUC certification is the basis to withhold universal service support, when in fact, at FCC's direction, all universal service support was cut off months in advance of any order by the PUC. The Commission needs to acknowledge that conversations with the FCC is the reason the PUC has not granted certification and the things that have happened since are a mere pretext to denying native Hawaiians the same universal service Congress promised to all citizens.

**5. SIC is Entitled To Receive At Least \$15 Million In High Cost USF From The Year 2015**

Omitted from the Notice, but of very significant importance, is the fact that it cannot be disputed that SIC was an ETC (even certified by the PUC as such) in 2015. Yet, SIC has never received the universal service funds it is supposed to receive for the second half of 2015.

No explanation has ever been given for the failure to pay these funds. These funds are owed to SIC and there is no basis for the failure to pay them.

**6. Under the Proposed Rule, What Is The Result When An Auction Winner Is Not Certified By A State PUC Either Due To Inaction By the State PUC Or Lack Of Information From the FCC**

The Rule appears to contemplate auctions to determine the local exchange carriers for the designated areas. Where an auction results in an award, what will be the result where the local PUC fails to act on ETC certification (as happened in Hawaii) not due to any failing on the part of the carrier but rather because of the lack of information from the FCC?

**7. The proposed rules violate the self-determination of Native Americans.**

The proposed rules attempt to, but fall short of, working with tribal authorities to determine who should be allowed on tribal lands to provide service to tribal areas.

Very truly yours,



LEX R. SMITH

for

KOBAYASHI, SUGITA & GODA, LLP

AIN J. CAYETANO  
GOVERNOR



**STATE OF HAWAII  
PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
485 S. KING STREET, #103  
HONOLULU, HAWAII 96813**

OFFICE COPY RECEIVED  
SEP 20 1995

Ans'd.....

YUKIO NAITO  
CHAIRMAN

JOHN P. SPIERLING  
COMMISSIONER

DENNIS R. YAMADA  
COMMISSIONER

September 20, 1995

Albert S.N. Hee  
Sandwich Isles Communications, Inc.  
Pauahi Tower, Suite 1520  
1001 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Hee:

Your letter of September 1, 1995, requests responses to two questions. The questions stem from responses made by the Hawaii Public Utilities Commission's Chief Counsel, Clay Nagao, to questions raised by Mr. Ken B. Chandler of the U.S. Department of Agriculture. We respond to the questions as follows.

Your first question is whether the PUC agrees that the Hawaiian Homes Commission has the power to authorize a public utility to provide service on its lands. Our response is that, pursuant to section 207(c)(1) of the Hawaiian Homes Commission Act of 1920, it appears that the **Hawaiian Homes Commission has the power to grant licenses and easements for telephone lines and other utility services.**

Your second question is whether the PUC agrees that public utilities do not have the ability to use their power of eminent domain to obtain easements for utility services on Hawaiian Homes lands. Our response is that, pursuant to the State of Hawaii Attorney General's opinion no. 60-77, it appears that **a public utility may not acquire any Hawaiian Homes land through eminent domain proceedings**, in spite of the right of eminent domain granted to public utilities by Hawaii Revised Statutes section 101-4.

I hope these responses will clarify any confusion that may have been generated by Mr. Nagao's July 18, 1995, letter to Mr. Chandler.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Yukio Naito", written over a horizontal line.

Yukio Naito  
Chairman

YN:CN:ac

BENJAMIN J. CAYETANO  
GOVERNOR  
STATE OF HAWAII



KALI WATSON  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOBIE M. K. M. YAMAGUCHI  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879  
HONOLULU, HAWAII 96805

June 2, 1998

Universal Service Administrative Co.  
100 South Jefferson Road  
Whippany, New Jersey 07981

Dear Madam/Sir:

SUBJECT: Reconfirmation of Sandwich Isles Communications,  
Inc. Designation as an Eligible Telecommunication  
Carrier

This letter is to reconfirm that the Department of Hawaiian Home Lands of the State of Hawaii ("DHHL") has designated Sandwich Isles Communications, Inc. ("SIC") as an Eligible Telecommunications Carrier ("ETC") under the Telecommunications Act of 1996.

The United States Congress enacted the Hawaiian Homes Commission Act on July 9, 1921 (the "Act") and established the Hawaiian home lands trust. At the time of statehood in 1959, the Hawaiian Homes Commission Act was incorporated into the Hawaii State Constitution and the Department of Hawaiian Home Lands was created to manage the trust and carry out the mission as intended under the Act.

The Act gave exclusive land use powers to the Hawaiian Homes Commission ("HHC") and exempted Hawaiian home lands ("HHL") from the authority of the Governor, allowing the HHC to operate independently of many state and county regulations. Public utilities cannot service HHL without permission of the HHC and cannot exercise the power of eminent domain on HHL.

The HHC issued an exclusive license agreement to Waimana Enterprises, Inc. on May 9, 1995, to build, construct, repair, maintain and operate a broad band

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telecommunications network on HHL. The License was partially assigned to SIC on January 15, 1996. By such License and partial assignment, the HHC, a state commission with the authority on HHL, designated SIC as an eligible telecommunications carrier under Section 214 of the Act within the properties of HHL on May 14, 1997.

At the time of our May 14, 1997 designation, the Federal Communication Commission ("FCC") had not issued its rules in regards to the qualifications of a ETC. Since that time, however, the FCC has issued its rules. Therefore, we confirm that SIC qualifies as a ETC under the rules, because it offers the following services:

- voice grade access to the public switched network;
- access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- dual tone multi-frequency signaling or its functional equivalent;
- single-party service or its functional equivalent;
- access to emergency services;
- access to operator services;
- access to interexchange service;
- access to directory assistance; and
- toll limitation services for qualifying low-income consumers.

SIC offers these services by either using its own facilities or a combination of its facilities and the resale of services of another facilities based carrier. Additionally, SIC advertises the availability of, and the prevailing prices for the list of universal services throughout HHL.

Moreover, SIC pursuant to the License, partial assignment, and under the terms specified by its lender, provides voice grade local exchange access utilizing its facilities-based network. SIC offers single party touch-tone service,

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access to operator services and directory assistance, and access to local usage free of usage changes. SIC has implemented 911 and enhanced 911 systems. In addition to standard subscriber notification and public notice procedures, SIC ensures that the availability of its services is well known among the residents of HHL. SIC does offer toll blocking, but has requested an extension of time to offer toll control because of technical feasibility.

Accordingly, we reconfirm SIC designation as a ETC by DHHL.

Should you have any questions, please call Linda Chinn, Acting Branch Manager, at (808) 587-6432.

Aloha,

A handwritten signature in black ink, appearing to read "Kali Watson", with a stylized flourish at the end.

KALI WATSON, Chairman  
Hawaiian Homes Commission

c: Members of the Hawaiian Homes Commission  
Waimana Enterprises, Inc./Sandwich Isles  
Communications, Inc.